

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DARRYL LEWIS,

Plaintiff,

v.

ROBERT BORNSTEIN and
NESTOR CARABALLO,

Defendants.

:
:
:
:
:
:
:
:
:
:
:

PRISONER
CASE NO: 3:09cv666(MRK)

RULING AND ORDER

Plaintiff Darryl Lewis, incarcerated and proceeding *pro se* and *in forma pauperis*, filed a Complaint [doc. # 2] on April 22, 2009 for false arrest and malicious prosecution against Federal Bureau of Investigation Special Agent Robert Bornstein and Hartford Police Detective Nestor Caraballo. On May 11, 2009, this Court dismissed all claims against Defendants Bornstein and Caraballo in their official capacities and ordered that Mr. Lewis's case be stayed pending the outcome of his federal criminal case, *United States v. Lewis*, Case No. 3:07CR292(EBB) (D. Conn.). *See* Initial Review Order [doc. # 4]. The Court directed the Clerk to administratively close Mr. Lewis's civil file pending the result of his criminal case.

On May 26, 2009, Mr. Lewis filed a Notice of Appeal as to the Initial Review Order. *See* Notice of Appeal [doc. # 5]. Approximately six weeks later, on July 9, 2009, Mr. Lewis filed in this Court a Motion Requesting Rehearing Appellate Rule 40(a)(2) [doc. # 6], which the Court construed as a motion under Rule 60 of the *Federal Rules of Civil Procedure*. In that motion, Mr. Lewis requested that certain errors in the Initial Review Order be corrected. Mr. Lewis sought to clarify that the residence that was searched – 45 Donna Drive, Apartment 3-C – was in New Haven,

Connecticut, and not in Hartford, Connecticut, as is stated in the Initial Review Order. Mr. Lewis also sought to correct the Court's understanding regarding his allegation that Defendants falsely attested that they observed an individual throw approximately thirty-two ounces of PCP liquid out of an apartment window, clarifying that these alleged observations occurred at the cooperating witness's apartment building, and not his own, as was stated in the Initial Review Order. *See* Order [doc. # 7].

At the time of Mr. Lewis's prior motion, however, his appeal of the Initial Review Order was still pending, and therefore the Court could not grant his Rule 60 motion to correct errors without leave from the Second Circuit. The Court explained that should Mr. Lewis obtain leave from the Second Circuit Court of Appeals, he could renew his request to have the Initial Review Order corrected. *See* Order [doc. # 7].

Now pending before the Court is a renewed motion from Mr. Lewis pursuant to Rule 60(a) and (b). *See* Pl.'s Motion to Correct Clerical Mistake [doc. # 8]. In it, Mr. Lewis seeks to have the Initial Review Order corrected in the manner describe above, as well as to have the stay of his case lifted. Mr. Lewis's appeal of the Initial Review Order was recently dismissed by the Second Circuit. *See Lewis v. Bornstein*, No 09-2242-CV (2d Cir. Sept. 16, 2009). Therefore, Mr. Lewis's request under Rule 60(a) is GRANTED, and the Court will enter a corrected Initial Review Order to reflect that the 45 Donna Drive address is in New Haven, Connecticut, and that the Defendants' allegedly false observations regarding the throwing of approximately thirty-two ounces of PCP liquid occurred at the cooperating witness's apartment building.

In support of his request under Rule 60(b) to have the stay of this case lifted, Mr. Lewis notes that on September 14, Judge Burns granted his motion to dismiss his one-count indictment on speedy

trial grounds. *See* Order [doc. # 46], *United States v. Lewis*, Case No. 3:07CR292(EBB) (D. Conn. Sept. 14, 2009). However, Judge Burns dismissed the case without prejudice, *see id.*, and on September 15, a federal grand jury in New Haven returned a five-count indictment of Mr. Lewis. Those charges are still pending. *See United States v. Lewis*, Case No.3:09CR292(EBB) (D. Conn.). Moreover, the Court notes that Mr. Lewis's prior CJA attorney was recently replaced another, Mr. Brian Spears. *See* Order granting Mot. to Appoint Counsel [doc. # 45], *United States v. Lewis*, Case No. 3:07CR292(EBB) (D. Conn. Sept. 8, 2009). Under these circumstances, the Court is not willing to lift the stay of this case. Mr. Lewis should first consult with his criminal defense attorney, Mr. Spears, about whether or not lifting the stay is in his best interests. If the two of them agree that it is, Mr. Lewis may renew his motion, but he should explain to the Court how proceedings in this case would not prejudice his ongoing criminal case.

In summary, Mr. Lewis's Rule 60(a) Motion to Correct Clerical Mistake is GRANTED, and the Court will docket a corrected Initial Review Order. However, Mr. Lewis's Rule 60(b) Motion Requesting Stay Be Lifted is DENIED, but without prejudice to renewal.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: **December 9, 2009.**